REMARKS/ARGUMENTS

Claim 5 was amended. No new matter has been added. Claims 1, 2, 3 and 5 remain in the application. Reconsideration of this application is respectfully requested.

Claim Rejection - 35 U.S.C. § 112, second paragraph:
Claim 5 was rejected under 35USC112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards the invention.,

The placement of the language "and engaging the switch" was deemed confusing. Applicant has amended claim 5 to clarify that the intelligent AVC engages the switch. No new matter has been added. Support is found in FIG. 2 and page 4, lines 12-14. Applicant respectfully requests that the rejection now be withdrawn.

Claim Rejection - 35 U.S.C. § 103:

Claims 1-3 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Helms (US Patent 5,666,426) in view of Ross (US Patent 5,291,558).
Claims 1-3 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Helms (US Patent 5,666,426) in view of Shimanuki (US Patent 5,073,928).

Claim 1 recites:

> A method for controlling volume in a two-way communication device, comprising:
> detecting a change in manual volume setting;
> measuring current background audio level via a microphone of the two-way radio;
> determining a relationship between the current background audio level and the volume setting;
> establishing the relationship as a desired volume level to be maintained;
> sensing a subsequent change in the manual volume setting;
> monitoring subsequent background audio level by switchably engaging the microphone of the two-way radio in response to the subsequent change in the manual volume setting;

comparing the current background level to the subsequent background level; determining whether a change in background level occurred; and automatically adjusting volume of a speaker of the two-way radio based on the relationship.

Applicant respectfully traverses. Claims 1, 2 and 3 (and claim 5 although not discussed by the Examiner) all recite measuring background audio levels. Applicant is not measuring the amplified output signal as does Helms. The Helms reference requires measuring both the desired (amplified output) signal and the background signal. In fact, Helms measures the desired signal and background signal simultaneously. As seen in FIG. 1, steps 32, 34 and col. 4, lines 1-7, as well as the independent claims, the Helms reference samples not only the background noise but also the amplified output signal simultaneously. This is done out of necessity, since the signal that Helms is controlling is constantly playing out, such as from a car radio. The Helms technique is not optimal, particularly in the case of two-way radios (claims 1 and 5), as the Helms technique can not independently sense background noise. A two-way radio is a simplex device, and as such can cleanly measure background levels alone (without the amplified output signal). All of Applicant's claims (1, 2, 3 and 5) are directed to measuring the background levels only – there is no recitation or requirement of measuring the desired/amplified output signal.

Additionally, the Examiner concedes, on page 4 of the Office Action, that Helms fails to disclose switchably engaging a microphone, but argues that Ross discloses switchably engaging a microphone channel with a change in gain (col. 4, lines 38-53). Applicant respectfully counters that the Ross reference is not Applicable and not combinable with the Helms reference and even if combined would not result in that which is claimed by

Applicant's invention. The Ross device requires the use of a plurality of microphones and is directed to the problem of "mic squeal" which is a problem encountered when a number of microphones are used. At best, Ross utilizes a separate ambiance channel including an ambiance pick-up or microphone (14) (col. 4, lines 4-8) strategically located so as to be away from the speakers or performers and to gather in the ambiance sounds that pervade the facility or area. As such, the Ross ambiance pick-up microphone (14) can not be equated to being an element of a two-way radio. As seen in FIG. 5 of Ross, the ambiance pick-up microphone (14) is separate from microphones #1, #2, #3 of figures. 1, 2, 3 and 5. The Abstract of Ross also states that the noise microphone is located away from the program microphones. The program microphones are not part of the Ross ambiance pick-up microphone (14).

The Examiner also refers to Ross column 1, lines 9-11 which describes "...microphones used by different participants at a meeting, performance or the like, and for controlling the underlying background noise signal (ambiance)". Applicant counters that "different participants at a meeting" in Ross must utilize mics #, 1, 2, 3, 4, ... #n, and the background noise requires the use of a separately located pick-up microphone (14). Applicant is not claiming a plurality of microphones and is not using different microphones for different functions, as does Ross. These characteristics of Ross re-emphasize Applicant's point that the Ross reference is not readily applicable to Applicant's invention (even if combined with Helms), as recited by Applicant's claims 1, 2, 3 and 5. Furthermore, as to claims 1 and 5 which specifically recite a two-way radio, Applicant further counters that a two-way radio is not and can not be used by multiple users at one time, so the Ross reference is simply not applicable to Applicant's two-way radio claims.

The above arguments apply to the other independent claims 2, 3 and 5. As such, applicant respectfully requests that the rejection of the claims as being unpatentable over Helms in view of Ross be withdrawn.

In rejecting claim 3 of Applicant's invention, the Examiner again concedes that Helms fails to disclose a switchably coupled microphone, and then refers to the Shimanuki reference stating, in item 7 of the Office Action, that Shimanuki discloses switchably coupling a microphone (FIG. 6, col. 8, lines 51-65). However, a closer look at Applicant's recitation of claim 3 provides:

> a microphone switchably coupled to the controller for monitoring background noise levels in response to changes in the manual volume control.

Applicant's point out, that Shimanuki deals with an automatic answering device for a cordless telephone and that the passage cited by the Examiner describes a switch (89) to connect a microphone (21) to a recording input terminal (83a). There is no mention of addressing background noise anywhere in the Shimanuki reference, and as such, there is no incentive to combine the Helms reference with the automatic answering device of Shimanuki as answering machines don't typically deal with background noise. Even if combined, the microphone of Shimanuki, records an answering message, and the microphone of Helms receives both the ambient signal and amplified output signal (as discussed above), thus the combination does not result in "a microphone switchably coupled to the controller for monitoring background noise levels in response to changes in the manual volume control".

The above arguments apply to the other independent claims 1, 2, and 5. As such, applicant respectfully requests that the rejection of the claims as being unpatentable over Helms in view of Shimanuki be withdrawn.

None of the cited references taken individually or combined sample/measure/sense background audio levels current and subsequent in response to a change to a manual volume control.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

The Applicants believe that the subject application, as amended, is in condition for allowance. Such action is earnestly solicited by the Applicants.

In the event that the Examiner deems the present application non-allowable, it is requested that the Examiner telephone the Applicant's attorney or agent at the number indicated below so that the prosecution of the present case may be advanced by the clarification of any continuing rejection.

The Commissioner is hereby authorized to charge Deposit Account 502117, Motorola, Inc, with any fees which may be required in the prosecution of this application.

Respectfully submitted,

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